

K C A H A

KANSAS CITY AREA HSOPITAL ASSOCIATION

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May 9, 1994

TO: Chief Operating Officers  
Chief Financial Officers  
Medical Records Directors

FROM: Ruth Coleman

RE: JACKSON COUNTY CIRCUIT COURT MEDICAL RECORDS RULE -  
UPDATE

Attached please find the paper prepared by Phil Appenzeller, Shughart, Thomson & Kilroy, at the request of the Jackson County Circuit Court for their en banc session regarding records copying costs (re: April 22, 1994 memo to Chief Operating Officers; Chief Financial Officers, and Medical Records Directors from Ruth Coleman).

Twenty-eight copies were filed with the Jackson County court clerk, Judge Gant's division, last Thursday. To date, Phil Appenzeller has not heard, nor does he expect to hear anytime soon, from the en banc session. He does, however, believe the material has been distributed and is being discussed.

Judge Moran, this week, decided not to rule on a motion involving copying costs "until the court en banc had made a decision".

Call if you have questions.

LAW OFFICES  
**SHUGHART  
THOMSON  
& KILROY**  
*A Professional Corporation*

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PHIL G APPENZELLER, JR.

Reply to Missouri Office  
Direct Dial (816) 395-0661

April 28, 1994

The Honorable Jack E. Gant  
Division 5, 2nd Floor  
Jackson County Courthouse  
308 West Kansas  
Independence, Missouri 64050.

Dear Judge Gant:

Pursuant to your request last week, I am submitting the following memorandum and attached document for the court en banc's review on the issue of the cost of photocopying medical records. You requested that I compile information to assist the court en banc in their determination of the reasonable cost of copying medical records. I have consulted with the Kansas City Hospital Association and various copying facilities around the city to obtain this information and they have indicated their willingness to participate.

Should you have any questions or need any further input, please don't hesitate to let me know.

Sincerely,

PHIL C . APPENZELLER

PCA/dml  
enclosures

## MEMORANDUM

TO: COURT EN BANC

FROM: PHIL APPENZELLER OF SHUGHART THOMSON & KILROY, P. C.

DATE: April 28, 1994

SUBJECT: COST OF RESPONDING TO MEDICAL RECORD REQUESTS

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### **I. WHY IS THIS ISSUE BEFORE THE COURT?**

The normal procedure when a hospital receives a request for a copy of a patients medical record is for the hospital to either have its employees pull and copy the record or to utilize an outside copying service. The requestor of the record is then billed for the cost incurred to provide the record. It has now become a frequent occurrence for attorneys to subpoena the medical records custodian to attend a medical records deposition at the attorneys office and then copy the records on the attorney's own copying equipment. This practice is done simply to avoid payment of the copying expense because, for the most part, the authenticity of the medical records is not at issue. Yet these same attorneys bill their clients for deposition time and the expense of filing the deposition. Therefore, it is really not a matter of the cost of the records but rather what cost is paid and by whom.

As a result, Kansas City area hospital records custodians have become deluged with subpoenas for records depositions. There is no compensation made other than the statutory witness fee. Hospitals are having to bear the cost for the time it takes to pull the records, assemble the records, travel to the deposition, stand at a copier while the records are being copied, and take the records back to the hospital.

Further, and more importantly, it is dangerous to allow medical records to leave hospitals. If the patient either presents himself to the facility or requires treatment at another facility, past medical records would not be available. This could be severely detrimental to patient care, as well as it opens the hospital to liability for failing to make medical records available on a timely basis as is required by state and federal laws and accreditation standards.

The purpose of this memorandum is to more fully set out what takes place when copies of records are requested. This memorandum will further show the actual cost associated with the copying of a medical record and why the cost of medical records in the Kansas City community, as well as across the nation, is not unreasonable.

## **II. HISTORY OF MEDICAL RECORDS**

Medical records are essential for ensuring quality patient care. Hospitals maintain medical records to better facilitate medical services provided to a patient, as well as to help health care providers in other facilities who may treat the patient.

Initially, medical records were kept in the facility and used only for the facility's purpose or when a consulting facility or physician requested the records. However, as health care has changed and litigation has expanded, medical records are now requested by a variety of groups and individuals, including attorneys, insurance companies, worker's compensation carriers, Medicare, Medicaid, and various governmental organizations.

Because of this incredible increase in requests, as well as federal and state guidelines regulating what can be disclosed, hospitals began to experience a backlog in complying with record requests. This backlog was detrimental to several requesting parties. The backlog hindered and impeded litigation and settlement of claims. Attorneys, patients, insurance representatives and governmental agencies all began to get disgruntled and annoyed with the amount of time it was taking to produce medical records. It was not unusual for attorneys to request a court order to require the records custodians to produce the records more quickly than often the backlog would allow.

Therefore, based on the above reasons, the majority of hospitals in the Kansas City area now contract with outside copying services. In fact, 61% of facilities responding to a recent survey use Correspondence Copy Service for an average of 87% of their release of information requests. (See attached Exhibit "A.") These copying services send their employees to the hospital to pull the records, copy the records, and mail the records. This quickly eliminated the problem of the backlog of medical records and permitted the hospital staff to proceed with their normal duties rather than being consumed with the administrative task of copying records. In fact, for most hospitals, one can receive a medical record within twenty-four hours of the time requested due to the fact that the hospitals are currently contracting with these outside services. As a result, efficiency has been improved.

## **III. RELATIONSHIP OF HOSPITALS WITH COPYING SERVICES**

The relationship between the hospitals and the copying services is purely a subcontracting agreement. The copying service agrees to send its employee to the hospital to respond to medical record requests.

Many attorneys and insurance companies are confused when they receive a copy bill in that they believe they are receiving this bill from the hospital. This is not true. Rather, the copying service bills the requesting party for the services it has provided, with payment to be made directly to the copying service.

#### **IV. RESPONDING TO MEDICAL RECORD REQUESTS**

There seems to be a misperception as to the process involved in responding to a request for a medical record. Many believe that copying a medical record is as easy as taking the record down to the local corner copying center to be copied at 10¢ per page. It is essential to understand that a hospital must take great precautions in the handling of medical records due to the sensitive information that is contained in these records. Additionally, it is critical that records be completely copied and in the proper order.

The following is a sample list of tasks required for a hospital to prepare a record for copying:

##### **A. Pre-copying tasks:**

1. Verify that the request, is in the proper form.
2. Verify that there is proper authorization from the patient or on the patient's behalf.
3. Log the copy request.
4. Obtain the record from storage. This can involve going to offsite storage facilities, the basement, or other areas of the hospital where records are stored.
5. Retrieve the record and make a determination that the record is in proper form and complete. Many times' hospital records have not been completed by physicians and, therefore, before they can be copied, a physician must. complete the record.
6. Review the record to ensure that there is no federally or state protected medical information contained in the record that requires special authorization for disclosure, such as treatment information pertaining to drugs, alcohol, HIV/AIDS or psychiatric conditions.
7. Transport the record to the photocopy area.

##### **B. Copying-tasks:**

1. Disassemble the record from its folder for photocopying.
2. Copy the record. This is a time-consuming activity due to the fact that most hospital records are contained in a variety of forms, including trifold documents, onion skin, continuous computer readouts such as EKG strips and fetal monitors strips, information on the front and back of a page, small print copies, microfilm and microfiche.

3. Once the record has been copied, it has to be reassembled in the exact order that it was in prior to copying.
4. Often times requests for copying the record specify only certain sections of the record, such as history and physicals or consults. Therefore, those sections of the record must be located, pulled and only those sections requested copied.

**C. Post-copying tasks:**

1. The original medical record must be returned to its storage area.
2. The record copy must be prepared for - mailing, including assuring that it is packed adequately for shipping with correct postage or the requesting party is contacted and advised that the record is ready to be picked up.
3. Log and file that the record was sent.

The above is simply a cursory outline of the minimum efforts required to respond to a medical record request. It does not include those many instances in which there is a legal question as to whether the authorization is valid and legal counsel has to be contacted to review the authorization to ensure that it is appropriate to release the record. In those instances where there is federally or state protected medical information, time is required to ensure that the medical record is not erroneously released.

As shown above, it became essential for hospitals to contract with outside copying services due to the extensive time and effort required for hospitals to respond to medical record requests. Without the use of outside copying contractors, hospitals would have to double or triple the size of their record staff, thereby making patient care even more expensive.

**V. THE COST OF RESPONDING TO MEDICAL RECORD REQUESTS**

There has been extensive research done in the area of what is a reasonable cost for responding to medical record requests. The leading article throughout the industry was prepared by Rose Dunn, RRA, CPA, in 1992 and is attached as Exhibit "B." Ms. Dunn has considered a variety of factors involved in the copying of a record to determine what is an appropriate cost. These factors include labor costs for verification of requests, labor and software costs for logging of requests, labor costs for retrieval, labor costs for copying, expense costs of copying, capital costs for copying, expense costs for mailing, postal costs for mailing, billing and bad debt expenses, labor costs for refiling, and space expense. (See Exhibit "B," generally, pp. 3-5.) Note, this article was prepared two years ago and does not take into account inflation on many of the costs considered.

Ms. Dunn concluded that based on a ten-page average, the total cost would be 83¢ per page. This cost does not include supervisory, administrative, overhead or external facility legal counsel fees, nor does it take into account such things as depreciation expenses or other facility overhead expenses such as accounting department, usage of the computers and software patient index support, offset for the cost of bad debts, and associated with copying on microfilm or microfiche. Further, this also does not include the costs associated with the copying which hospitals provide for other health care facilities and providers at no cost as part of meeting the ongoing medical needs of the patient. Id. at pp. 4-5.

Throughout the United States, there has been a comparison of fees that outside copying services charge. Attached as Exhibits "C" and "D" are a comparison of fees of Texas-based correspondence companies and national-based correspondence companies. The national average is approximately \$1.00 per page. Further, is also a retrieval fee or a base fee which is included. The reason for the base or retrieval fee is to cover the situation where a small number of pages are requested. For example, with a record of only two pages, then the cost to copy would be \$2.00 based on a \$1.00 per page charge. This would not adequately cover the cost for retrieving that record, copying it and replacing it, as well as the mailing and postal costs. Therefore, many hospitals and copy services have a minimum fee or charge a retrieval fee to offset the expense for those requests with minimal pages.

## **VI. THE EFFECT IF HOSPITAL COPY SERVICES ARE ELIMINATED**

In Missouri, legislation has been proposed which limits hospitals to only charge 25¢ per page plus a \$6.00 retrieval fee. Although this legislation has been proposed for the last several years, it still has been unable to get out of committee in either the Missouri House of Representatives or the Senate. The reason for this is because of the controversy over the adequacy of this fee and the failure to agree upon any other set charge. Attached as Exhibit "E" is a memorandum from the Missouri Hospital Association discussing this proposed legislation. As is evident, this is a complicated issue.

There have been studies done which indicate that the average hospital cost to respond to a medical record request is \$1.11 per page. This cost is greater for hospitals which utilize their employees rather than external copying services. (See attached Exhibit "F" at p. 14.)

In the Kansas City area several hospitals were asked whether it would be economically feasible to bring record copying back in-house. Hospitals have individually prepared and shown to me for purposes of this presentation an approximate cost of what it would take to have them resume the responsibility of responding to record requests. Below are some examples of that cost per page. It should be noted that the expenses listed include personnel, benefits for those personnel, administrative costs, correspondence, software, computers, copiers, supplies, postage, and equipment.

### Hospital A

Total approximate cost to the hospital per year: \$451,400

Approximate total pages copied per year: 327,000

Average cost per copy:  $\$451,400 \div 327,000 = \$1.38$  per copy.

### Hospital B

Total approximate cost to the hospital per year: \$400,738

Approximate pages copied per year: 300,000

Total cost per page:  $\$400,738 \div 300,000 = \$1.34$  per page.

## **VII. CONCLUSION**

As is illustrated above, the process of responding to medical record request is extremely complex. It is not as simple as some would like to make it out to be. Therefore, for hospitals to provide appropriate patient care, adequately and legally maintain its medical records, and timely meet the requests of those who request medical records, it has become a necessity for them either to use outside copying services or to increase the size of their medical record department record staff. The average cost charged in the Kansas City area is reasonable in light of all the factors included above, and based on the charges being made throughout the United States.

If legislation or judicial action occurs that would regulate this cost, a charge that is too low may result in: (1) hospitals being forced to bring copying back in-house, causing patient care to suffer; or (2) hospitals losing money because of costs incurred but not reimbursed in responding to medical record requests. Both factors are important to all hospitals.

It is critical for hospitals to be in a position to ensure that access to patient care is not jeopardized, yet also be in a position to timely and adequately respond to a medical record request. The current system of utilizing copying services is an effective mechanism to accomplish these tasks. Copying service charges in the Kansas City area are reasonable based upon local and national studies.